

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ERIKA G. LOSONSZKY

Claimant

VS.

CONAGRA FOODS, INC.

Respondent

Self-Insured

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Docket No. 1,022,559

ORDER

Respondent appeals the July 21, 2005 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant was awarded benefits for an injury occurring through a series of accidents through April 11, 2005.

ISSUE

Did claimant suffer accidental injury arising out of and in the course of her employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge (ALJ) should be affirmed.

Claimant, a production worker, alleges accidental injury to her right shoulder while moving vats of meat which weigh between 1,000 and 1,400 pounds. Claimant testified she had to push the vats with her right shoulder in order to move them. Respondent disputes the claim, arguing the evidence does not sufficiently prove that claimant suffered the accidental injury as alleged.

By history, claimant originally injured her right shoulder in a car accident on July 25, 2003, at which time she was taken to the emergency room for treatment. Claimant was experiencing pain at that time. An MRI obtained on July 25, 2003, revealed extensive degeneration of the right supraspinatus tendon and the report of the MRI stated that a partial tear could not be excluded.

Claimant contends that after undergoing physical therapy, she was pain free by January of 2004. Claimant then testified that in December 2004, she noticed reoccurrence of her shoulder problems. She consulted her family physician Gary L. Petry, M.D., and a repeat MRI was obtained on March 28, 2005. The July 25, 2003 MRI report is not part of the record. However, the March 28, 2005 report does discuss a comparison between the two MRI reports. The March 28, 2005 MRI report indicates that claimant has suffered a tear of the anterior half of the right supraspinatus tendon. The report also states that when comparing this study with the prior study of July 25, 2003, "an interval change has occurred."¹

Claimant was referred for treatment to orthopedic surgeon Allan D. Holiday, Jr., M.D. Dr. Holladay examined claimant on April 13, 2005, at which time he noted that claimant had undergone an "atraumatic" onset of right shoulder pain. He noted claimant did not have a discrete accident or injury which claimant could recall and there was some indication that the injury may have been connected to the motor vehicle accident that claimant had earlier suffered. Dr. Holiday went on to note that he felt this was a chronic degenerative shoulder disease with a rotator cuff tear, which he determined was not workers compensation related nor had it been aggravated by her work.²

Claimant was evaluated by Sergio Delgado, M.D., board certified orthopedic surgeon, on June 9, 2005. Dr. Delgado's report indicated that claimant developed pain and weakness in her shoulder when pushing and pulling vats of meat. Dr. Delgado opined that the right shoulder complaints and clinical findings were aggravated by claimant's work activities.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.³

The Board finds, in comparing the medical reports and conflicting opinions of Dr. Holiday and Dr. Delgado, that claimant has proven by the barest of margins that she did suffer an aggravation to her right shoulder through a series of accidents culminating on April 11, 2005. The Board understands that a dispute such as this is common in workers compensation litigation, especially at the preliminary stage, when the testimonies of the physicians involved are usually not part of the record. As the Board has only the reports of the doctors to go by, the Board is certain that additional explanation will be provided by the regular hearing, clarifying the causation factors in this instance.

¹ P.H. Trans., Cl. Ex. 1.

² P.H. Trans., Cl. Ex. 1.

³ K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

However, for purposes of preliminary hearing, the Board finds that claimant has satisfied her burden of proof and, therefore, the Order of the ALJ should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated July 21, 2005, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October, 2005.

BOARD MEMBER

c: Jeffrey K. Cooper, Attorney for Claimant
Mark E. Kolich, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director